

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MONTBLANC-SIMPLO GMBH and
MONTBLANC NORTH AMERICA, LLC,

Civil Action No. 07 CIV 6956

Plaintiffs,

-against-

**ANSWER AND DEMAND
FOR JURY TRIAL**

BOBLEY-HARMANN CORPORATION d/b/a
MONTEFIORE FINE WRITING INSTRUMENTS,
MONTEFIOREGIFTS.COM and GIFTVALUES.COM
and JOHN DOES 1-10,

Defendants.
-----X

Defendants, by their attorneys, Franklin, Gringer & Cohen, P.C., as and for their answer to the plaintiffs' complaint respectfully allege as follows:

1. Deny the allegations set forth in ¶¶ 4, 5, 10, 14, 16, 18, 19, 21, 22, 23, 25 and 26 of the complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶¶ 2, 3, 7, 11, 12, and 13 of the complaint.
3. Deny the allegations of ¶¶ 1, 6 and 15 as same set forth a legal conclusion that is not susceptible to a response as an allegation of fact, and defendants deny same to the extent that same is interpreted as an allegation of fact.
4. Deny the allegations set forth in ¶ 8 of the complaint, except respectfully refers this Honorable Court to the filing referenced therein for a determination of the relevance of same and the parties' respective rights and obligations thereto.

5. Deny the allegations set forth in ¶ 9 of the complaint, except respectfully refers this Honorable Court to the alleged product for a determination of the relevance of its design, shape, and other characteristics and how the same may impact the parties' respective rights and obligations herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. The complaint fails to state a claim upon which relief can be granted to the plaintiffs.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. Defendants have not engaged in the use of plaintiffs' alleged trademark.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Plaintiffs' alleged trade dress is merely generic.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. Plaintiffs' alleged trade dress has not acquired any secondary meaning in the marketplace.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. Defendants' alleged infringing product is sufficiently dissimilar to plaintiffs' subject product.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Elements of the design of plaintiffs' subject product are commonplace.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE


12. Defendants have not engaged in any intentional conduct to confuse consumers to believe that its product(s) originate with the plaintiffs.

WHEREFORE, defendants hereby demand judgment as follows:

1. Dismissing the complaint in its entirety;
2. Granting defendants such other, further and different relief as may be deemed just and proper; and
3. Awarding defendants the costs and disbursements of this action.

Dated: Garden City, New York
October 24, 2007

FRANKLIN, GRINGER & COHEN, P.C.
Attorneys for Defendants


By: Steven E. Cohen (SEC4315)
666 Old Country Road, Suite 202
Garden City, NY 11530
(516) 228-3131

TO: KALOW & SPRINGUT LLP
Attorneys for Plaintiffs
488 Madison Avenue
New York, NY 10022
(212) 813-1600